

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

JACKSON FORD, INC.¹

Employer

and

CASE 7-RC-22545

**DISTRICT LODGE 60, LOCAL LODGE 698,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO**

Petitioner

APPEARANCES:

Roy R. Hunsinger, Esq., Attorney, of Grosse Pointe Farms, for the Employer
David L. Porter, of Cincinnati, Ohio, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² The Employer and Petitioner filed briefs, which were carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Overview

The Petitioner seeks to represent a unit consisting of approximately 12 full-time and regular part-time automotive service technicians and a lube technician employed at the Employer's Jackson, Michigan facility, but excluding professional employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act, and all other employees. The Employer contends that the unit must also include the remainder of the service department, which consists of three service advisors, a dispatcher, five parts department employees, two body shop employees, and two porters.³ There is no history of collective bargaining regarding any of the involved employees.

I conclude that the petitioned-for unit constitutes an appropriate craft unit. The Employer requires the automotive service technicians to be licensed by the State of Michigan and certified by Ford Motor Company, which involves participating in numerous training courses not attended by any other service department employees. The automotive service technicians perform more complex repairs than the other service department employees, and those repairs are performed exclusively by the automotive service technicians. The automotive service technicians must also furnish most of their own tools, which are costly and only rarely shared with the other service department employees. The automotive service technicians are paid at a considerably higher rate than the other service department employees. Finally, there is little evidence of daily work-related contact and community of interest between the automotive service technicians and other service department employees.

While the lube technician is not required to hold any certifications or licenses, he works alongside the automotive service technicians and interacts closely with them when inspecting and/or servicing vehicles. Although the lube technician is less skilled than the automotive service technicians, he is engaged in mechanical work when he performs oil and filter changes, checks vehicle fluids and lubrication, examines tire pressure, and inspects the calipers, drums, and brake system pads. The lube technician occasionally assists the automotive service technicians with their repairs. Likewise, some automotive service technicians have performed lube technician work, such as oil changes. Therefore,

³ In its brief, the Employer makes reference to a warranty clerk. There is no record evidence regarding that position or its duties.

the automotive service technicians and lube technician constitute an appropriate craft unit.

The Employer's Operations

The Employer is an automobile dealer that sells and services new and used automobiles, including Ford Motor Company cars and trucks. Its operation is divided into a sales department and a service department. The service department is further divided into the automotive service area, body shop, and parts department. The sales department and service department are located on the same piece of property in Jackson, Michigan. However, they are each housed in their own building and have different street addresses. The sales department facility is located on Wisner Street, while the service department facility is located on North West Avenue. The body shop, which, as noted, is part of the service department, is located in a third building. Collectively, the two departments employ approximately 50 employees.

The Employer started its business in September 1993. The Employer's president is Cecil Pryor, and its vice president is Randy Kunz. The office manager is Sue Protrowski, who supervises four or five clerks. Within the sales department, there is a sales manager, Jim Knox, and finance and insurance managers, Greg Szymanski and Ellen Brodock. There are six or seven sales employees.

Within the service department, there is no designated manager. Rather, the department is overseen by Pryor and Kunz. The automotive service area employs 3 service advisors, a dispatcher, approximately 12 automotive service technicians, 1 tube technician, and a porter. The service advisors and dispatcher perform some managerial duties. The parts department manager is Shelly Worden, who supervises two full-time and two part-time counter employees, and a part-time driver. Worden possesses the authority to hire and fire employees. The body shop manager is Dan Carter, who supervises a body technician, a paint technician, a porter, and an office assistant. Carter also possesses the authority to hire and fire employees.

Employee Classifications Within the Service Department

Automotive Service Technicians

Automotive service technicians diagnose, service, and repair vehicles. They work on brakes, tune up vehicles, repair transmissions, and perform engine work. Automotive

service technicians also perform work on trucks, do diesel repairs, and work on vehicle suspensions and drivetrains.

The automotive service technicians are required to have certain kinds of certifications, which are mandated through Ford Motor Company and the State of Michigan. All of the Employer's automotive service technicians are certified. Certifications range in areas from engine repairs, automatic transmission repairs, manual transmission repairs, power steering systems, brake systems, electrical systems, heating and air conditioning, and engine tune-up. The Employer pays for the training that the automotive service technicians receive. Some of the training is administered via computer. The State of Michigan certifications are administered by All State Certification with the Secretary of State. In addition to the actual cost of training, the Employer pays the automotive service technicians for the time they spend in training.

There are two employees who are taking college courses to be automotive service technicians, who currently help the technicians with their repairs. The Employer is not paying for their college courses. The two employees possess some certifications and licenses. They are both paid on an hourly basis. The parties have stipulated to including these two employees in either the narrower unit petitioned for by the Petitioner or the broader unit sought by the Employer.

The automotive service technicians are paid a flat hourly rate. Each automotive service technician's rate of pay is based upon the number of years worked for the Employer, skill level, and amount of time since the most recent raise. If the automotive service technicians are working on a warranty job, the calculation is based on Ford's warranty time standards. For example, if Ford pays the Employer 1.1 hours, the service technician is paid 1.1 hours at his flat rate. When the Employer is running specials, the automotive service technicians are paid their flat rate at the number of hours worked based on the special pricing. If the job performed by the automotive service technician is a straight customer pay job, the Employer uses the Chilton manual to compute the pay. There are also times when the automotive service technician quotes a number of hours to perform a particular job. Automotive service technicians may also receive bonuses when they work more than 40 hours in a week. They receive \$.50 for all hours worked when they work over 40 hours; \$1.00 for all hours worked when they work over 45 hours; \$1.50 for all hours worked when they work over 50 hours; and \$2.00 for all hours worked when they work over 55 hours. The range of pay for an automotive service technician is \$11 to \$26 an hour. The customer pay rate for services received is approximately \$70 to \$72 per hour for labor, excluding specials and warranties.

Automotive service technicians wear blue uniforms. They must use their own tools because the Employer does not supply many tools for them. The value of an automotive service technician's toolbox is as much as \$50,000 to \$100,000.

Lube Technicians

The lube technician works alongside the automotive service technicians, inspecting and servicing vehicles. The lube technician sometimes assists the automotive service technicians with their repairs. The lube technician is mainly responsible for performing oil and filter changes, checking vehicle fluids and lubrication, examining tire pressure, and inspecting the calipers, drums, and brake system pads. On many occasions, the lube technician will have a certified automotive service technician take a look at a vehicle to help him ascertain the area needing repair. If the lube technician finds an area requiring repair, he informs the service advisor or dispatcher, who then relays that information to the customer.

The lube technician is paid an hourly rate. He also receives a commission for each lube job he performs. In addition, the lube technician receives a commission on items that he discovers need to be repaired and are subsequently repaired as a result of his recommendation.

Service Advisors

The service advisors are responsible for recording the customer's problem, sending it to the dispatcher, and contacting the customer with questions regarding additional repairs or problems. The service advisors may occasionally take a test drive with a customer to try to verify a squeak or rattle sound.

There are three service advisors, one of whom is paid a commission based on sales for the department. The other two service advisors are paid based on gross profits, calculated from the difference between the amount of the sale and the cost of performing the sale, which is labor. The service advisors do not wear uniforms, do not have their own tools, and are not required to possess any automotive certifications.

Dispatcher

The dispatcher receives a repair order form from a service advisor, and is then responsible for assigning the repair to an automotive service technician. The dispatcher assigns work based upon the automotive service technician's level of skill. The dispatcher also considers which technician has either completed or almost completed his previous job. The dispatcher does not wear a uniform.

Parts Department Employees

The parts department consists of four counter employees and one driver. The counter employees order, stock, and pass out parts to the automotive service technicians for their various repairs. In addition, they sell parts over the counter to the general

public, and to other dealerships and repair facilities. The counter employees receive a salary and commission. The commission is calculated on the gross sales of the department. They wear different uniforms than those worn by the service technicians and body shop employees.

The part-time driver picks up parts from other facilities and returns them to the Employer. The majority of the parts are ordered from Ford Motor Company. The driver is paid approximately \$10 per hour.

Body Shop Employees

The body shop repairs damaged vehicles, limited to sheet metal and structural repairs. The body shop consists of one body shop technician, who does bump work and replaces sheet metal, one paint technician, and one porter.

The body shop technician and paint technician perform warranty work, for which they receive a flat rate, and customer pay work, for which they receive a commission. The customer pay rate for services is approximately \$35 per hour of labor, excluding specials and warranties. Customer pricing is calculated either from the Employer's manual, the involved insurance company's manual, or Ford's warranty pricing. The range of pay for the body shop technician and paint technician is \$14 to \$16 an hour, with no bonus system. Body shop employees are not required to earn the same certifications that the automotive technicians possess. They may have state certifications in frame straightening. While the body shop employees do not need to possess the majority of tools used by automotive technicians, they do need some of the same tools. Body shop employees wear the same blue uniforms as the automotive service technicians.

Porters

There are two porters. One is assigned to the body shop, and the other is assigned to the automotive service department. The porters maintain the work areas by changing light bulbs and cleaning restrooms and work areas. In addition, the porters move vehicles from the back aisle to the parking lot upon completion of repairs. Porters are not required to have their own tools or to be certified by the State of Michigan or Ford Motor Company. Porters wear uniforms, which can differ depending in which department they work.

The body shop porter may also assist the body technician with light work such as changing a headlight or taillight. The porter within the body shop may assist in another department if he is needed. For example, he may occasionally fill in and do oil changes for the lube technician during lunch. The automotive service porter does not perform automotive service technician work.

Interaction Between Classifications

During a typical customer transaction for mechanical service, a customer pulls into the service drive and informs a service advisor of the vehicle's problem. The service advisor records the problem on the repair order form, and gives it to the dispatcher. The dispatcher then assigns the work to an automotive service technician. When the automotive service technician ascertains the vehicle's problem, or if he also discovers a new or additional problem, he informs the service advisor, who in turn informs the customer. If an unexpected repair is recommended by the automotive service technician, the service advisor asks the customer if he/she wants that repair completed. During the servicing of the vehicle, the automotive service technician may interact with the parts department employees if parts are needed for the repair. The parts department employee assigns the part to that particular repair and records it electronically. If a part needs to be ordered, the parts department employee orders it and records it on an order slip.

If a customer needs body work done, the customer pulls directly into the body shop, which has its own separate building. If a customer's vehicle needs both body shop and mechanical work, the vehicle typically goes to the body shop first, and then to the service department.

The automotive service technicians do not go to the body shop to perform body work, nor do the body shop employees go to the service technicians' area to perform mechanical repairs. Automotive service technicians do not paint cars or do body work, and similarly, body shop employees do not perform mechanical automotive repairs. There is little interaction between these two classifications. For example, an automotive service technician may go to the body shop once or twice in one year to get a special nut or bolt. The parts department employees do not perform any automotive service technician work, lube technician work, or body shop work. The only contact they have with automotive service technicians is if a part is needed for a repair.

Other Working Conditions

The automotive service area has a time clock, restrooms, lunchroom, and changing area. The service advisors have desks separated by a wall and large garage door from the automotive service technician's area. The parts department is located near the automotive technicians' area, but separated by the restrooms and lunch area. The lunch area is used by the technicians, dispatcher, porters, and parts department employees. They all punch the same time clock.

The body shop building is located approximately 100 feet from the main service department building. The body shop has its own time clock, restroom, and changing area, which is used only by body shop employees. The body shop employees generally eat in their own building.

All of the employees in the service department receive the same benefits, including health insurance, life insurance, disability insurance, holiday pay, vacation pay, and 401(k). The entire facility has the same pay period, which runs from Saturday to Friday. The record is unclear as to the number of meetings held in the past with the various classifications of employees. It is clear, however, that, at least within the past year, there has been only one meeting held where all of the service department employees attended. The purpose of that meeting was to discuss the current union campaign.

Analysis

The Petitioner contends that the automotive service technicians and lube technician constitute a separate appropriate craft unit. The Employer contends that the only appropriate unit must also include service advisors, the dispatcher, parts department employees, body shop employees, and porters. A petitioner's desire as to the unit sought is a relevant consideration in a unit determination. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). A petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, it need not be the most appropriate unit. *Omni International Hotel*, 283 NLRB 475 (1987). While the optimum unit for collective bargaining may well be broader in scope, a union is not precluded from seeking a smaller unit when the unit sought is, by itself, also appropriate for collective bargaining in light of all the circumstances. *Frisch's Big Boy Ill-Mar*, 147 NLRB 551, 552-53 (1964).

The Board has found that mechanics possessing skills and training unique from other employees constitute a group of craft employees within an automotive department, and therefore may, if requested, be represented in a separate unit apart from other service department employees. *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990); *Dodge City of Wauwatosa*, 282 NLRB 459, 460 fn. 6 (1986)⁴. I find that the Petitioner's proposed unit of automotive service technicians and lube technician constitutes an appropriate craft unit.

The automotive service technicians and lube technician form a homogenous group, and have little community of interest in terms of their daily work activities with other service department employees. They perform job duties that are distinct from those of the other employees. The automotive service technicians, like the mechanics in *Dodge City* and the service technicians in *Fletcher Jones Chevrolet*, supply their own distinct tools, are compensated at a rate different from the other service department employees,

⁴ In *Dodge City*, the Board distinguished certain earlier cases, including one cited by the Employer in its brief, *W.R. Shudoff*, 154 NLRB 992 (1965). The Employer's reliance on *Honda of San Diego*, 254 NLRB 1248 (1981), an unfair labor practice case, is also misplaced. The Employer quoted the Board as stating, "parts and service should be in the same unit..." However, the union in that case was seeking a unit of both parts and service department employees. Further, the Board did not state that "parts and service should be in the same unit". Rather, the ALJ merely stated that parts and service department employees "constitute an appropriate unit". *Id* at 1263.

perform most of their work in their own service area, and have only limited or casual contact with other service department employees. The Employer charges customers approximately \$72.00 an hour for the work performed by automotive service technicians and only approximately \$35.00 an hour for the work performed by body technicians. Additionally, the automotive service technicians are required to be certified by the State in different and substantially more categories than the body shop employees. The service advisors, dispatcher, parts department employees, and porters are not required to hold any certifications. As in *Fletcher Jones Chevrolet*, the body shop employees primarily perform repairs rather than technical mechanical work, and the limited mechanical work they do perform is incidental. Further, the automotive service technicians/lube technicians and body shop employees have different supervision, distinct restrooms, lunch and changing areas, use different time clocks, do not share tools, and perform work in separate buildings.

While the lube technician is not required to hold any certifications or licenses, he works alongside the automotive service technicians and interacts closely with them when inspecting and/or servicing vehicles. Although the lube technician possesses less skill than the automotive service technicians, he is still engaged in mechanical work when he performs oil and filter changes, checks vehicle fluids and lubrication, examines tire pressure, and inspects the calipers, drums, and brake system pads. The lube technician occasionally assists the automotive service technicians with their repairs. Likewise, some automotive service technicians have performed lube technician work, such as oil changes. In *Fletcher Jones Chevrolet*, the quick service technicians handled lubrication, oil and filter changes, belts, hoses and other simple mechanical repair work. The Board held that they should be included in the unit with the service technicians as helpers or trainees, even though they were not as skilled as the service technicians.

5. Accordingly, based on the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time automotive service technicians and lube technicians employed by the Employer at its Jackson, Michigan facility; but excluding managerial employees, professional employees, sales department employees, office clerical employees, service advisors, dispatchers, parts department employees, body shop employees, porters, and guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 17th day of November 2003

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, regional Director
National Labor Relations Board
Seventh Region
Patrick V. McNamara Federal building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

Classification

420-2906	440-1760-9133-0500
420-2936	440-1760-9133-4300
420-2960	440-1760-9167-0233
450-2966	420-5048
420-5075	

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

DISTRICT LODGE 60, LOCAL LODGE 698, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **November 24, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **December 1, 2003**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be stopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.